



BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1081

[Docket No.: CFPB-2013-0030]

RIN 3170-AA29

Rules of Practice for Issuance of Temporary Cease-and-Desist Orders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Bureau of Consumer Financial Protection (Bureau) to prescribe rules establishing procedures for the conduct of adjudication proceedings. On June 29, 2012, the Bureau published the final Rules of Practice for Adjudication Proceedings. That final rule, however, does not apply to the issuance of a temporary cease-and-desist order (TCDO) pursuant to section 1053(c) of the Dodd-Frank Act. The Bureau now issues this interim final rule governing such issuance and seeks public comments.

DATES: This interim final rule takes effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be assured of consideration.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2013-0030 or Regulatory Information Number (RIN) 3170-AA29, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. In general, all comments received will be posted to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. An appointment to inspect comments can be made by telephoning (202) 435-7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Submit only information that you wish to make publicly available. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information such as name and address information, email addresses, or telephone numbers.

FOR FURTHER INFORMATION CONTACT: John R. Coleman, Senior Counsel, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552; at (202) 435-7254.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 2012, the Bureau published in the *Federal Register* the final Rules of Practice for Adjudication Proceedings pursuant to sections 1022(b)(1) and 1053(e) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1) & 5563(e).¹ That final rule, however, does not apply to the

¹ See 77 FR 39058 (June 29, 2012) (codified at 12 CFR Part 1081).

issuance of a TCDO pursuant to section 1053(c) of the Dodd-Frank Act.² The Bureau previously invited comments as to whether special rules governing such proceedings are necessary and, if so, what the rules should provide.³ One commenter recommended that the Bureau promulgate rules governing temporary cease-and-desist proceedings initiated pursuant to section 1053(c) of the Dodd-Frank Act and pointed to the Federal Deposit Insurance Corporation's (FDIC) rules governing temporary cease-and-desist proceedings, 12 CFR 308.131, as an example of such rules.⁴ The Bureau agrees that there should be specific rules governing the issuance of a temporary cease-and-desist order and now issues these interim final Rules of Practice for Issuance of Temporary Cease-and-Desist Orders (Rules), which govern the issuance of orders pursuant to section 1053(c) of the Dodd-Frank Act, 12 U.S.C. 5563(c).⁵

In developing these Rules, the Bureau considered the procedures related to temporary cease-and-desist orders that are followed by other regulatory agencies, including the FDIC, the Securities and Exchange Commission (SEC), and the Office of the Comptroller of the Currency (OCC). The Rules most closely follow the FDIC's approach as codified in 12 CFR 308.131. The Bureau issues these Rules to clarify (1) the basis for the issuance of a TCDO; (2) the content, scope, and form of a TCDO; (3) the procedures governing the issuance of a TCDO and the remedies available to the Bureau in issuing a TCDO; and (4) the rights of persons subject to a TCDO.

II. Section-by-Section Summary

Section 1081.100 Scope of the rules of practice

² *Id.* at 39058.

³ *See* 76 FR 45338, 45338 (July 28, 2011).

⁴ *See* 77 FR 39058, 39060 (June 29, 2012).

⁵ *Id.*

This section is revised to clarify that the rules of practice described in this section are those contained in subparts A, B, C, and D. This section does not address the scope of subpart E, which is separately addressed in new § 1081.500.

This section is further revised to acknowledge that § 1081.200(d) permits commencement of a proceeding through a stipulation and consent order.

Section 1081.200 Commencement of proceeding and contents of notice of charges

This section is revised to clarify that the section's stated requirements for commencing a proceeding apply to proceedings governed by subparts A, B, C, and D. The requirements for commencing a temporary cease-and-desist proceeding are set forth in new § 1081.501.

Section 1081.500 Scope

This section describes the scope of the Rules and makes clear that the issuance of a TCDO does not affect the underlying adjudication proceedings instituted by the issuance of a notice of charges.

Section 1081.501 Basis for issuance, form, and service

This section states the conditions under which the Bureau, through the Director or his or her designee, may issue a TCDO; a TCDO's required format and content; the proper method of service; and the general parameters of the kinds of activities a TCDO may prohibit or affirmatively require.

Section 1081.502 Judicial review, duration

This section describes the process under which a TCDO respondent may seek judicial review of a TCDO, the sole process available for seeking review of a TCDO. This section clarifies the duration of a TCDO's effectiveness and the authority of the Director or his or her designee to terminate, limit, or suspend a TCDO.

III. Legal Authority

The Bureau promulgates the Rules pursuant to its authority to implement section 1053 of the Dodd-Frank Act, 12 U.S.C. 5563(e), as well as its general rulemaking authority to promulgate rules necessary or appropriate to carry out the Federal consumer financial laws, 12 U.S.C. 5512(b)(1).

IV. Section 1022(b) Provisions

In developing the Rules, the Bureau has considered the potential benefits, costs, and impacts and has consulted or offered to consult with the prudential regulators, the Department of Housing and Urban Development, the Department of Justice, and the Federal Trade Commission, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.⁶

The Dodd-Frank Act requires the Bureau to prescribe rules establishing such procedures as may be necessary to carry out section 1053 of the Act, which provides for temporary cease-and-orders in subsection (c). The Rules themselves do not impose significant costs upon covered persons, but, consistent with section 1053, provide a straightforward and efficient process for the issuance of a temporary cease-and-desist order, and a direct route to judicial review.

The Rules have no unique impact on insured depository institutions or insured credit unions with \$10 billion or less in assets described in section 1026(a) of the Dodd-Frank Act, nor do they have a unique impact on rural consumers.

⁶ Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult with the appropriate prudential regulators or other Federal agencies regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind, which establishes Bureau procedures and imposes no standards of conduct, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analyses and consultations described in those provisions of the Dodd-Frank Act.

V. Regulatory Requirements

The Rules relate solely to agency procedure and practice and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b).

Although these Rules are exempt from these requirements, the Bureau invites comment on them.

Because no notice of proposed rulemaking is required, these regulations are not a “rule” as defined by the Regulatory Flexibility Act, 5 U.S.C. 601(2). The Bureau has determined that the regulations in this subpart do not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 12 CFR Part 1081

Administrative practice and procedure, Banking, Banks, Consumer protection, Credit, Credit unions, Law enforcement, National banks, Savings associations, Trade practices.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Part 1081 of Chapter X in Title 12 of the Code of Federal Regulations as follows:

PART 1081—RULES OF PRACTICE FOR ADJUDICATION PROCEEDINGS

1. The authority citation for part 1081 is revised to read as follows:

Authority: 12 U.S.C. 5563(e); 12 U.S.C. 5512(b).

Subpart A – General Rules

2. Section 1081.100 is revised to read as follows:

§ 1081.100 Scope of the rules of practice.

Subparts A, B, C, and D of this part prescribe rules of practice and procedure applicable to adjudication proceedings authorized by section 1053 of the Dodd-Frank Wall Street Reform

and Consumer Protection Act of 2010 (Dodd-Frank Act) to ensure or enforce compliance with the provisions of Title X of the Dodd-Frank Act, rules prescribed by the Bureau under Title X of the Dodd-Frank Act, and any other Federal law or regulation that the Bureau is authorized to enforce. Except as otherwise provided in this part, the rules of practice contained in subparts A, B, C, and D of this part do not govern the conduct of Bureau investigations, investigational hearings or other proceedings that do not arise from proceedings after a notice of charges or a stipulation and consent order.

Subpart B – Initiation of Proceedings and Prehearing Rules

3. Section 1081.200 is amended by revising paragraph (a) to read as follows:

§ 1081.200 Commencement of proceeding and contents of notice and charges.

(a) *Commencement of proceeding.* A proceeding governed by subparts A, B, C, and D of this part is commenced by filing of a notice of charges by the Bureau in accordance with § 1081.111. The notice of charges must be served by the Bureau upon the respondent in accordance with § 1081.113(d)(1).

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4. Subpart E is added to read as follows:

Subpart E – Temporary Cease-and-Desist Proceedings

Sec.

1081.500 Scope.

1081.501 Basis for issuance, form, and service.

1081.502 Judicial review, duration.

Subpart E – Temporary Cease-and-Desist Proceedings

§ 1081.500 Scope.

(a) This subpart prescribes the rules of practice and procedure applicable to the issuance of a temporary cease-and-desist order authorized by section 1053(c) of the Dodd-Frank Act (12 U.S.C. 5563(c)).

(b) The issuance of a temporary cease-and-desist order does not stay or otherwise affect the proceedings instituted by the issuance of a notice of charges, which are governed by subparts A, B, C, and D of this part.

§ 1081.501 Basis for issuance, form, and service.

(a) In general. The Director or his or her designee may issue a temporary cease-and-desist order if he or she determines that one or more of the alleged violations specified in a notice of charges, or the continuation thereof, is likely to cause the respondent to be insolvent or otherwise prejudice the interests of consumers before the completion of the adjudication proceeding. A temporary cease-and-desist order may require the respondent to cease and desist from any violation or practice specified in the notice of charges and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of the proceedings initiated by the issuance of a notice of charges.

(b) Incomplete or inaccurate records. When a notice of charges specifies, on the basis of particular facts and circumstances, that the books and records of a respondent are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of the respondent or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of the respondent, then the Director or his or her designee may issue a temporary order requiring:

(1) The cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(2) Affirmative action to restore such books or records to a complete and accurate state, until the completion of the adjudication proceeding.

(c) Content, scope and form of order. Every temporary cease-and-desist order accompanying a notice of charges shall describe:

(1) The basis for its issuance, including the alleged violations and the harm that is likely to result without the issuance of an order; and

(2) The act or acts the respondent is to take or refrain from taking.

(d) Effective and enforceable upon service. A temporary cease-and-desist order is effective and enforceable upon service.

(e) Service. Service of a temporary cease-and-desist order shall be made pursuant to § 1081.113(d).

§ 1081.502 Judicial review, duration.

(a) Availability of judicial review. Judicial review of a temporary cease-and-desist order shall be available solely as provided in section 1053(c)(2) of the Dodd-Frank Act (12 U.S.C. 5563(c)(2)). Any respondent seeking judicial review of a temporary cease-and-desist order issued under this subpart must, not later than ten calendar days after service of the temporary cease-and-desist order, apply to the United States district court for the judicial district in which the residence or principal office or place of business of the respondent is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order.

(b) Duration. Unless set aside, limited, or suspended by the Director or his or her designee, or by a court in proceedings authorized under section 1053(c)(2) of the Dodd-Frank

Act (12 U.S.C. 5563(c)(2)), a temporary cease-and-desist order shall remain effective and enforceable until:

(1) The effective date of a final order issued upon the conclusion of the adjudication proceeding;

(2) With respect to a temporary cease-and-desist order issued pursuant to §1081.501(b) only, the Bureau determines by examination or otherwise that the books and records are accurate and reflect the financial condition of the respondent, and the Director or his or her designee issues an order terminating, limiting, or suspending the temporary cease-and-desist order.

Dated: September 10, 2013.

Richard Cordray,
Director, Bureau of Consumer Financial Protection.

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